

August 16, 2004

Department of Homeland Security  
Management Directorate  
Environmental Planning, Office of Safety and Environment  
Washington, D.C. 20528  
ATTN: Mr. David Reese

**Sent via facsimile to (202) 772-9749**

RE: Notice of Proposed Directive Implementing the National Environmental Policy Act

Dear Mr. Reese:

The following comments on the Department of Homeland Security's ("DHS") proposed directive containing policy and procedures for implementing the National Environmental Policy Act of 1969 ("NEPA") are submitted on behalf of Defenders of Wildlife, Natural Resources Defense Council, American Rivers, Audubon Society, Biodiversity Conservation Alliance, Friends of the Earth, New Mexico Wilderness Alliance, Oceana, Ocean Conservancy, Oil and Gas Accountability Project, Powder River Basin Resource Council, Sierra Club, Southwest Environmental Center, U.S. Public Interest Research Group, and Wyoming Outdoor Council. The undersigned organizations are extremely concerned with two fundamental aspects of the proposed directive: 1) the overly broad use of categorical exclusions allowing the Department of Homeland Security to circumvent NEPA analysis for many projects which could potentially have significant effects on the natural and human environment; and 2) the withholding of information now routinely available to the public through the NEPA process.

While we respect and support DHS's complex and vital mission, we strongly oppose the proposed NEPA directive as written, and urge the Department to significantly amend its proposal to address these significant deficiencies. We hope our comments will aid the Department in fulfilling its critical mission, while preserving both the environment and avenues of public participation and government transparency that are among the hallmarks of our democracy.

Establishing carefully considered and painstakingly crafted NEPA procedures is especially important for an agency such as DHS which includes under its umbrella a large number of components responsible for regulating a staggering array of activities and operations, as well as ensuring the safety of the nation's citizens. Encompassing agencies as diverse in mission and culture as the Federal Emergency Management Agency, U.S. Border Patrol, U.S. Secret Service, Coast Guard, Nuclear Incident Response Team, and the Transportation Security Administration, the manner in which DHS undertakes its environmental responsibilities has tremendous ramifications for communities across the nation, as well as the natural environment. The challenge DHS faces in implementing

NEPA is particularly difficult since many of the activities and much of the infrastructure regulated by the Department—including hazardous and toxic materials and storage, pipelines and transmission systems, power plants, and biological research—are potential terror targets *and* potential environmental hazards.

Unfortunately, DHS's proposed directive fails to strike the important, but achievable, balance between its responsibility to provide for the safety of the nation's citizens and its duty to protect the human and natural environment. Ignoring NEPA's mandate that categorical exclusions be limited to routine agency administrative actions, the directive includes many types of activities which clearly have the potential for significant adverse environmental effects, including but not limited to hazardous waste disposal, dredging of coastal areas, aircraft operations, off-road vehicle patrols on public lands, construction of barriers and even logging operations.

For example, the use of barriers and fences by the Border Patrol in the fragile deserts of the southwestern U.S. could cause significant environmental harm by impeding migration routes for rare wildlife. Similarly, disposal of toxic and hazardous wastes could pose grave risks to both the human and natural environment depending on the location and manner of disposal. Categorical exclusions are intended to promote the flexibility and speed of NEPA analysis in carefully considered and limited categories of agency actions that inarguably have a minimal effect on the environment. In contrast, DHS's proposed directive would create categorical exclusions applying to numerous, vaguely defined, and potentially harmful agency activities and operations, and thus oversteps the boundaries of their intended and lawful use.

Additionally, the proposed directive contains troubling and ill-defined provisions allowing for the withholding of environmental information from the public. While classified information has been traditionally withheld from NEPA documents, DHS's proposal goes well beyond this to prohibit disclosure of "critical infrastructure information" and "sensitive security information." The current processes for defining what qualifies as protected information are vague and leave too much discretion to industry and DHS. The process for identifying additional information to withhold should be as rigorous as the process that now exists for classified information.

For years, federal agencies have had the ability to segregate truly classified information from information rightfully in the public domain. By strongly emphasizing the appropriateness of withholding information, and by directing that entire NEPA analysis may be kept from the public, the proposed directive unfortunately creates a presumption of secrecy rather than one of openness. The Department provides no explanation for why existing authorities allowing for limited and carefully considered withholding of classified information are no longer sufficient. We strongly oppose this deeply disturbing move towards secret information, as well as the precedent it creates for other federal agencies to withhold NEPA analysis under vague notions of national security.

In sum, for the health of both the human and natural environment, and in order to uphold both public faith in our government and accountability within our government, the undersigned groups respectfully oppose the Department of Homeland Security's proposed draft NEPA directive. While DHS's national security mission is essential, it must be accomplished in a way that does not compromise the very democracy that the Department was created to protect. We call on the Department to reconsider its proposed directive, and to meaningfully amend it to place well-defined and specific limitations on the use of both categorical exclusions and the withholding of classified and sensitive information.

Sincerely,

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